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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION  
14

15  
16 IN RE: SOCIAL MEDIA ADOLESCENT  
17 ADDICTION/PERSONAL INJURY  
18 PRODUCTS LIABILITY LITIGATION

19 THIS DOCUMENT RELATES TO:

20 Case No. 4:23-cv-05448-YGR  
21

MDL No. 3047

Case No. 4:22-md-03047-YGR

**STATES' RESPONSE TO PRO SE  
MOTION TO INTERVENE**

Judge: Hon. Yvonne Gonzalez Rogers  
Action Filed: 10/24/2023

## INTRODUCTION

Texas resident Conghua Yan’s pro se motion to intervene constitutes an improper attempt to insert private claims for individual relief into a public enforcement action brought by 33 state attorneys general (the States).<sup>1</sup> The States have exercised their sovereign authority to bring this multistate, civil enforcement action against Meta. This enforcement action includes claims entirely distinct from those available to private plaintiffs: the States seek to vindicate public rights, which the States are uniquely tasked to protect, and to obtain relief for the public rather than private individuals. While private claims may proceed in parallel to this public law enforcement action in separate suits—and, indeed, scores of private suits are proceeding in multi-district litigation currently before this Court—a motion to intervene should not conflate a public enforcement action with a private claim.

The Federal Rules of Civil Procedure and this Circuit’s precedents do not allow Yan to intervene in the States’ public enforcement action. The States’ enforcement action involves interests separate from—and not derivative of—the interests of any private individual, including Yan. The States’ pursuit of this separate public enforcement action does not impact Yan’s ability to seek relief for individualized harms. And Yan’s claims do not share common questions of law or fact with the States’ claims, particularly because Yan’s claims are predicated on alleged violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act, which none of the States invoke. Thus, not only is there no basis to grant Yan’s motion to intervene, but allowing intervention by a private claimant would fundamentally disrupt the States’ authority to vindicate public rights.

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<sup>1</sup> The States include State of Arizona, the People of the State of California, State of Colorado, State of Connecticut, State of Delaware, State of Georgia, State of Hawai‘i, State of Idaho, the People of the State of Illinois, State of Indiana, State of Kansas, Commonwealth of Kentucky, State of Louisiana, State of Maine, Office of the Attorney General of Maryland, State of Michigan, State of Minnesota, State of Missouri, State of Nebraska, State New Jersey and New Jersey Division of Consumer Affairs, the People of the State of New York, State of North Carolina, State of North Dakota, State of Ohio, State of Oregon, Commonwealth of Pennsylvania, State of Rhode Island, State of South Carolina, State of South Dakota, Commonwealth of Virginia, State of Washington, State of West Virginia, and State of Wisconsin.

## ARGUMENT

### I. **YAN HAS NO MANDATORY RIGHT TO INTERVENE IN THE STATES' PUBLIC ENFORCEMENT ACTION.**

Yan cannot establish a mandatory right to intervention under the Federal Rules of Civil Procedure. Rule 24(a) provides a right to intervene to anyone who is “given an unconditional right to intervene by federal statute” or, alternatively, anyone who has (1) “an interest relating to the property or transaction that is the subject of the action” that (2) would be “impair[ed] or impede[d]” if the person was not permitted to intervene and (3) could not be “adequately represent[ed]” by the parties. Fed. R. Civ. P. 24(a)(1)-(2). Yan does not provide any legal authority that provides an unconditional right to intervene in the States’ law enforcement action, and Yan has not demonstrated any of the three factors that would alternatively give rise to such a right.

#### A. **Yan Has No Significantly Protectable Interest that Gives Rise to a Right of Intervention Under Rule 24(a).**

Yan has failed to state an interest in the States’ enforcement action that is sufficient to give rise to a right of intervention. To justify mandatory intervention, a proposed intervenor must demonstrate a “significantly protectable interest” in the property or transaction that is the subject of the underlying action. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). “[A]t an irreducible minimum Rule 24(a)(2) requires that the asserted interest be ‘protectable under some law’ and that there exist ‘a relationship between the legally protected interest and the claims at issue[.]’” *Cal. Dep’t of Toxic Substances Control v. Jim Dobbins, Inc.*, 54 F.4th 1078, 1088 (9th Cir. 2022) (citation omitted). A relationship exists “only if the resolution of the plaintiff’s claims actually will affect the [proposed intervenor].” *Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998) (citations omitted). Accordingly, where the resolution of an action would affect the proposed intervenor’s interest in real property, *see e.g., Arakaki v. Cayetano*, 324 F.3d 1078 (9th Cir. 2003), or impose direct economic consequences on the proposed intervenor, *see, e.g., United State v. Aerojet General Corp.*, 606 F.3d 1142 (9th Cir. 2010), the interest is significantly protectable.

By contrast, a more generalized interest in the underlying action or an interest that is several degrees removed from the disposition of the underlying action cannot sustain a right of intervention. *See, e.g., United States v. Alisal Water Corp.*, 370 F.3d 915, 919-20 (9th Cir. 2004) (denying a creditor’s motion to intervene in an environmental enforcement action that might impair the creditor’s ability to collect a debt because “[t]his interest is several degrees removed from the overriding public . . . policies that are the backbone of this litigation”); *Westlands Water Dist. v. United States*, 700 F.2d 561, 563 (9th Cir. 1983) (denying a nonprofit’s motion to intervene in a contract dispute between a water district and the federal government because the nonprofit’s interest was not based on the underlying contracts but rather “enlightened public policy”). Particularly in public enforcement actions, a substantial portion of the population may have a generalized interest in the litigation and its outcome, but that generalized interest does not give rise to a right of intervention. *See, e.g., People v. Tahoe Reg’l Planning Agency*, 792 F.2d 779, 780-82 (9th Cir. 1986).

Here, the States have brought a public enforcement action entirely distinct from any protectable interest Yan may have. A civil action brought by governmental entities for unfair or deceptive acts or practices is “a law enforcement action designed to protect the public and not to benefit private parties.” *City & Cnty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115, 1125-26 (9th Cir. 2006) (quoting *People v. Pac. Land Rsch. Co.*, 569 P.2d 125, 129 (Cal. 1977)); *see also, e.g., Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 149 (Colo. 2003) (holding that if a wrong is private in nature and does not affect the public, the claim is not actionable under the Colorado Consumer Protection Act); *Quattrocchi v. Georgia*, 850 S.E.2d 432, 436 (Ga. App. 2020) (holding that under the Georgia Fair Business Practices Act, although the State may seek restitution, an action by the State does not seek damages to remedy private wrongs).

The States’ action is “fundamentally different from a class action or other representative litigation.” *Payne v. Nat’l Collection Sys., Inc.*, 91 Cal. App. 4th 1037, 1045 (2001); *see also, e.g., Tiismann v. Linda Martin Homes Corp.*, 637 S.E.2d 14, 17 (Ga. 2006) (distinguishing the elements of a private consumer protection action from those applicable to a State action). The

States’ interests and right to pursue this action “is separate from, and not derivative of” that of private plaintiffs. *City & Cnty. of San Francisco*, 433 F.3d at 1127; *see also, e.g., State ex rel. Edmisten v. Challenge, Inc.*, 284 S.E.2d 333, 339 (N.C. Ct. App. 1981) (noting that public enforcement of the North Carolina Unfair or Deceptive Trade Practices Act is intended to advance the public interest “rather than to redress individual grievances”); *Lightfoot v. MacDonald*, 544 P.2d 88, 90 (Wash. 1976) (recognizing the Attorney General’s ability to bring a consumer protection action for the benefit of the public and noting, “[t]he Attorney General’s responsibility in bringing cases of this kind is to protect the public from the kinds of business practices which are prohibited by the statute; it is not to seek redress for private individuals” (quoting *Seaboard Sur. Co. v. Ralph Williams’ Nw. Chrysler Plymouth, Inc.*, 504 P.2d 1139, 1143 (Wash. 1973))).

Yan’s individual interests bear no relationship to the public interests represented by the States. The States’ public enforcement action does not involve real property that Yan has a claim to, contracts Yan is party to, or Yan’s economic interests. Nor does the disposition of this litigation affect Yan’s ability to vindicate private claims to redress the harm Yan personally suffered on Meta’s Platforms.

At most, Yan has expressed a generalized interest in halting Meta’s misconduct—an interest many members of the public share. Such generalized interest in the States’ public enforcement action is insufficient to support mandatory intervention. *See, e.g., Tahoe Reg’l Planning Agency*, 792 F.2d at 780-82 (denying property owners’ motion to intervene in an enforcement action by the state of California challenging a regional environmental plan because the plan’s effects on proposed intervenors’ property were “incidental” and their interest was the generalized interest shared by many members of the public). For this reason alone, Yan’s motion for mandatory intervention must be denied.

**B. The States’ Public Enforcement Action Does Not Impact Yan’s Claims Because Yan Can File a Separate Action Like the Other Private Plaintiffs.**

The States’ public enforcement action has no impact on Yan’s interests. Individual interests are not impeded or impaired by a pending action when they can be “raise[d] . . . through a

1 separate lawsuit[.]” *Warren v. Comm’r of Internal Revenue*, 302 F.3d 1012, 1015 (9th Cir. 2002).  
 2 Particularly with regard to public enforcement actions, courts have held that an individual’s  
 3 interests are not impaired or impeded where the proposed intervenor can pursue a claim  
 4 independently from the government. *See, e.g., Equal Emp’t Opportunity Comm’n v. E. Airlines,*  
 5 *Inc.*, 736 F.3d 635, 638-39 (11th Cir. 1984) (denying a motion to intervene for one of the nineteen  
 6 individuals whose age discrimination claims served as the basis for a public enforcement action  
 7 brought by the Equal Employment Opportunity Commission because that individual could seek  
 8 personal relief in a separate lawsuit). Even if the disposition of a pending action will create  
 9 relevant precedent, that precedent must have a direct and practical effect on the proposed  
 10 intervenor to justify mandatory intervention. *See Greene v. United States*, 996 F.3d 973, 977-78  
 11 (9th Cir. 1993).

12 Here, the States’ public enforcement action is separate and distinct from a private action. As  
 13 a public enforcement action, the States’ case “lacks the fundamental attributes of a consumer  
 14 class action filed by a private party.” *Pac. Land Rsch. Co.*, 569 P.2d at 129; *see also, e.g., Hall v.*  
 15 *Walter*, 969 P.2d 224, 234-35 (Colo. 1998) (holding that private causes of action under the  
 16 Colorado Consumer Protection Act are distinct from public enforcement); *Tiismann*, 637 S.E.2d  
 17 at 17 (distinguishing between the elements of private and public actions under the Georgia Fair  
 18 Business Practices Act). Accordingly, “traditional res judicata principles have no application to a  
 19 judgment resulting from [public enforcement action for unfair or deceptive acts or practices] filed  
 20 by the Attorney General or another public prosecutor in a subsequent lawsuit brought by a victim  
 21 of improper business practices.” *Payne*, 91 Cal. App. 4th at 1047 (citation omitted).

22 Yan can thus vindicate any individual interests by initiating a separate action in state court  
 23 or by filing into the multi-district litigation alongside over 100 other actions, the majority of  
 24 which were filed by private parties. Under either option, there will be no res judicata impact from  
 25 the States’ enforcement action. Furthermore, any precedent created by the States’ claims would  
 26 not affect Yan’s case because the underlying factual and legal basis for Yan’s claims are also  
 27 distinct from the States’: Yan seeks to claim a violation of the RICO Act stemming from obscene  
 28 third-party advertising on Meta’s platforms. Mot. at 1, 4. The States bring enforcement claims

1 under the Children’s Online Privacy Protection Act of 1998 (COPPA)<sup>2</sup> and state consumer  
 2 protection statutes that stem from Meta’s unfair and deceptive business practices, unrelated to the  
 3 content of third-party advertisements.

4 Since Yan’s individual interests can be fully vindicated apart and with no practical impact  
 5 from the States’ enforcement action, there is no impairment that justifies mandatory intervention.

### 6 **C. The States Best Represent Public Interests.**

7 To the extent Yan has a generalized interest in the public rights that the States seek to  
 8 vindicate, the States are best situated to represent that interest. When the government is  
 9 representing the public, there is an “assumption of adequacy.” *Arakaki*, 324 F.3d at 1086. Thus,  
 10 the proposed intervenor must make a “very compelling showing” that the government cannot  
 11 adequately represent public rights. *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*,  
 12 960 F.3d 603, 620 (9th Cir. 2020). Yan makes no showing, nor could Yan. There is no question  
 13 that the States are best situated to seek redress for Meta’s deceptive and unlawful conduct on  
 14 behalf of the public. In sum, there is no basis for mandatory intervention.

## 15 **II. YAN HAS NO BASIS TO PERMISSIVELY INTERVENE IN THE STATES’ PUBLIC** 16 **ENFORCEMENT ACTION.**

17 In the absence of grounds for intervention by right, Rule 24(b) allows the court discretion to  
 18 permit intervention to anyone who “is given a conditional right to intervene by a federal statute”  
 19 or who “has a claim or defense that shares with the main action a common question of law or  
 20 fact.” Fed. R. Civ. P. 24(b)(1)(A)-(B). Yan can make neither showing.

21 As an initial matter, Yan does not identify a federal statute that provides a conditional  
 22 right to intervene, and the States are unaware of one. Moreover, as discussed, Yan’s motion  
 23 appears to raise questions of law and fact that are fundamentally different from those raised by  
 24 the States.<sup>3</sup> Yan seeks to insert a RICO claim into this public law enforcement action—a legal

25 <sup>2</sup> Because “COPPA does not authorize a private right of action,” *Jones v. Google LLC*, 73  
 26 F.4th 636, 641 (9th Cir. 2023), Yan could not even bring a standalone COPPA claim.

27 <sup>3</sup> Yan’s motion does not comply with Rule 24(c) because it is not “accompanied by a  
 28 pleading that sets out the claim . . . for which intervention is sought.” Nor does it adopt a pleading  
 by reference, which may cure this deficiency. Regardless, Yan’s motion fails despite any “purely

theory advanced by none of the States. And Yan’s proposed legal theory factually appears to derive exclusively from the content published on Meta’s platforms (the alleged obscene materials “in the form of sponsored advertisements”). Mot. at 1. Whereas, in summary, the States allege misconduct stemming from Meta’s (1) collection of data from users under thirteen years old without required parental notification and consent; (2) misrepresentations surrounding the safety of its social media platforms; and (3) the deceptive and unfair constellation of features that prolong engagement and lead to youth addiction.

It would be infeasible to litigate such distinct factual issues and private legal theories in the same public enforcement action brought by the States. And it is unnecessary to try to do so, especially when Yan has other means to pursue private litigation in either state court or alongside numerous other private claimants in the multi-district litigation. Furthermore, allowing a private claimant to intervene and exercise any influence or control over a public enforcement action would impede the States’ ability and sovereign authority to vindicate the public interest. These significant differences underscore why permissive intervention should also be denied.

### CONCLUSION

For these reasons, the States respectfully request that the Court deny Conghua Yan’s motion to intervene in this public enforcement action.

Dated: November 15, 2023

Respectfully submitted,

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technical” defect. *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009) (citation omitted).



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**ATTESTATION**

I hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: November 15, 2023

By: /s/ Marissa Roy

Marissa Roy

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and had the foregoing document served by mail to Conghua Yan at the address provided, 2140 E Southlake Blvd, Suite L-439, Southlake, Texas 76092.

By: /s/ Marissa Roy

Marissa Roy